

1 THE HONORABLE RICHARD A. JONES
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WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 ALASKA VILLAGE ELECTRIC
10 COOPERATIVE, INC., an Alaska
corporation,

11 Plaintiff,

12 v.

13 ZURICH AMERICAN INSURANCE
14 COMPANY, a New York corporation;
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,
15 THROUGH CHARTIS GLOBAL MARINE,
a Pennsylvania corporation; NATIONAL
CASUALTY COMPANY, a Wisconsin
corporation; GREAT AMERICAN
16 INSURANCE COMPANY OF NEW YORK,
a New York corporation; and STARR
17 INDEMNITY & LIABILITY COMPANY, a
Texas corporation,

18 Defendants.
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IN ADMIRALTY AND AT LAW

Lead Case No. 2:11-cv-01375-RAJ

Member Case No. 2:11-cv-01819-RAJ

DECLARATION OF DAVID S.
FOWLER IN SUPPORT OF REPLY ON
MOTION FOR SUMMARY JUDGMENT

NOTED FOR HEARING:
February 17, 2012

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21 I, David S. Fowler, declare as follows from my own first-hand knowledge and after a
22 review of my underwriting files:

23 1. I am a Vice President for Zurich Marine in its San Francisco offices. As such, I
24 handle underwriting for most west coast marine risks presented to Zurich Marine by marine
25 insurance brokers for possible coverage. I was approached in the summer of 2010 by FIS
26 Marine with a proposal to provide builder's risk coverage for two barges to be built by Sneed

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PDX/111581/182524/DFK/8956837.1

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1 Shipbuilding in Texas for Vitus Marine LLC and Microgen Technologies, Inc. I was advised
 2 up front by the broker that the prospective assured wanted the coverage issued without
 3 Addendum Number 2, which is a form drafted by the American Hull Insurance Syndicate
 4 and sometimes included in builder's risk policies.

5 2. Via e-mail, I gave a quote to FIS, but asked in that e-mail why the broker wanted
 6 the coverage without Addendum 2. I told Chris Bader of FIS Marine I wasn't inclined to
 7 write it that way, but was willing to discuss it. In a phone call, Mr. Bader of FIS Marine
 8 (who referred the request for coverage to me) told me that it was because Jim Bauer, a
 9 lawyer for the one of the assureds, wanted it that way, and insisted on it. Neither Mr. Bader
 10 nor anyone else told me or revealed that his or their intention was to provide coverage for
 11 repair costs for defective yard workmanship.

12 3. I then took the proposal to Mr. John Weber, Zurich's national underwriting Vice
 13 President and my ultimate superior, and sought his thinking and direction. Mr. Weber, in
 14 addition to being my superior, has a wealth of first-hand knowledge about marine
 15 underwriting, and particularly this Addendum and builder's risk coverage. We both spoke
 16 and exchanged e-mails, and I attach as Exhibit 1 to my declaration our e-mail exchange of
 17 July 15, 2010. We agreed that not including Addendum 2 made no difference at all in the
 18 scope of the coverage we were offering. It was not my intent to provide any coverage for the
 19 costs of repairing any defective Sneed workmanship, and no request to do so was ever made
 20 of me or, to the best of my knowledge, of Zurich. The basic builder's risk form we offer
 21 provides no such coverage. Mr. Weber authorized me to go ahead with the proposed
 22 quotation on that basis.

23 4. I confirmed to Mr. Bader later on the 15th that I would stick to the quote I'd given
 24 him and not include the Addendum, taking the lead position on a subscription contract. I
 25 proposed no additional premium for not including the Addendum because, again, it made no
 26 difference in the scope of the coverage we were providing. Had Mr. Bader or anyone else

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1 told me he wanted coverage for the costs of repairing defective workmanship, we wouldn't
2 have written it.

3 5. I was not authorized to write coverage for repair of defective workmanship, and
4 didn't seek that authority. It was certainly not my belief, not then, and not now, that we were
5 providing any such coverage

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

8 Dated this 16 day of February 2012.

D. W. Stenhouse

David S. Fowler

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2012, I caused to be served the foregoing DECLARATION OF DAVID S. FOWLER IN SUPPORT OF REPLY ON MOTION FOR SUMMARY JUDGMENT on the following parties via United States District Court – Western District of Washington’s Electronic Case Filing System (“ECF”) at the following addresses:

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By:

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Attorneys for Defendants

Zurich American Insurance Company,
National Union Fire Insurance Company
of Pittsburgh, PA, through Chartis
Global Marine, National Casualty
Company, Great American Insurance
Company of New York, and Starr
Indemnity & Liability Company

CERTIFICATE OF SERVICE - 1
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